

Chapter LIV.

THE POWER OF INVESTIGATION.

1. Assertion of right to inquire into conduct of Military and Civil Administration. Sections 1725–1730.¹
 2. Inquiry into Management of Bank of the United States. Sections 1731–1733.²
 3. In relation to President, Vice-President, and Cabinet Officers. Sections 1734–1741.³
 4. As to Officers of the Army and Navy. Sections 1742, 1743.
 5. Various instances of exercise of the power. Sections 1744–1749.⁴
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1725. In 1792 the House declined to request the President to inquire into the causes of the defeat of General St. Clair's army and asserted its own right to make the investigation.

An example of difficulty caused by permitting division of a question which does not present two substantive propositions.

On March 27, 1792,⁵ the following resolution was proposed:

Resolved, That the President of the United States be requested to institute an inquiry into the causes of the late defeat of the army under the command of Major-General St. Clair; and also into the causes of the detentions or delays which are suggested to have attended the money, clothing, provisions, and military stores for the use of the said army, and into such other causes as may in any manner have been productive of the said defeat.

Objection was made to this resolution on the ground that it was an invasion of the Executive department by the Legislative department; while an inquiry into the expenditure of money was the duty, not of a court-martial but of the House, and should be made by a select committee. On the other hand, it was urged that the resolution amounted to a simple request; but against this it was argued that the theory that the House was the grand inquest of the nation would lead to confusion in the Departments of the Government, and that the Constitution had limited the objects of inquiry by the House.

¹ See also investigations undertaken with a view to impeachment. Sections 2342, 2343, 2364–2366, 2385, 2399, 2403, 2408, 2409, 2444, 2469–2471, 2486–2515 of this volume.

² In the case of Kilbourn the House exceeded its power in inquiring into private affairs. Section 1611 of Volume II. See also Chapman case in Senate. Section 1612 of Volume II.

³ Conflict with the President as to right of House to inquire into his conduct. Section 1596 of Volume II. House has no power to inquire into circumstances under which the primary vote for Presidential electors is given. Section 1977 of this volume. See, also, discussion referred to in Section 1698 of this volume.

⁴ As to right of House to inquire into offenses in a preceding Congress. Section 1690 of this volume. As to attempt to investigate alleged corruption in the Senate sitting for an impeachment trial. Section 2064 of this volume.

⁵ First session Second Congress, Journal, pp. 551, 552 (Gales & Seaton ed.); Annals, pp. 490–494.

A division of the question being demanded, the question was put first on the following:

Resolved, That the President of the United States be requested to institute an inquiry into the causes of the late defeat of the army under the command of Major-General St. Clair.

This was decided in the negative, yeas 21, nays 35.¹

The House then agreed to this resolution, yeas 44, nays 10:

Resolved, That a committee be appointed to inquire into the cause of the failure of the late expedition under Major-General St. Clair, and that the said committee be empowered to call for such persons, papers, and records as may be necessary to assist their inquiries.

On April 4² it was

Resolved, That the President of the United States be requested to cause the proper officers to lay before this House such papers of a public nature in the Executive department as may be necessary to the investigation of the causes of the failure of the late expedition under Major-General St. Clair.

1726. In 1807 the House, after mature consideration, declined to investigate charges against the chief of the Army, but requested the President to make such an inquiry.

The right and duty of the House to inquire into the manner of expenditure of public money by the Executive branch was early asserted.

The House, by resolution, called on two of its Members to state what they knew concerning charges against the chief of the Army, then under discussion.

In the early practice of the House a resolution making a request of the President was taken to him by a committee of Members.

On December 31, 1807,³ Mr. John Randolph, of Virginia, having presented to the House certain papers in his possession, proposed the following resolution:

Resolved, That the President of the United States be requested to cause an inquiry to be made into the conduct of Brigadier-General Wilkinson, commander of the Army of the United States, in relation to his having at any time whilst in the service of the United States corruptly received money from the Government or agents of Spain.

This resolution gave rise to a long debate as to the power of the House to make such a request in relation to a military officer, as to whom the Constitution did not give the House the power that it had in the case of the impeachment of a civil officer. It was objected that it would be improper and unconstitutional for one Department of the Government to call upon another to perform its duty, as in this case the House was calling upon the Executive to do what was evidently his duty to do. On the other hand, it was contended that the House was the grand inquest of the nation, and as such had a right to make the request of the Executive.

Mr. Barent Gardenier, of New York, moved that the resolution be referred to a select committee and that the committee have power to send for persons and papers.

¹ It will be observed that it was not necessary to vote on the second portion, since no substantive proposition remained, and it would have meant nothing had it been agreed to.

² Journal, p. 561; Annals, p. 536.

³ First session Tenth Congress, Journal, p. 101 (Gales & Seaton ed.); Annals, pp. 1257–1268.

Mr. Robert Marion, of South Carolina, moved to strike out the words giving the committee power to send for persons and papers.

In support of this motion it was urged that the House had no power to send for persons and papers, because it had no authority to make an investigation into the conduct of an officer under the authority of the President and not subject to impeachment. It was urged that the powers of the House were limited by the Constitution and that it had no powers except from the Constitution. It was argued that as the House had the war-making power it certainly could inquire into the loyalty of the commander in chief. A question was also raised as to what the House would do with the testimony that it already had and that it was proposed to obtain, and the suggestion was made that the only proper course would be to transmit it to the Executive.

The question being taken on January 5,¹ the House, by 72 yeas to 38 nays, struck out the provision giving the committee power to send for persons and papers, and then, without division, decided in the negative the motion to refer to a select committee.

A resolution was agreed to calling on two Members of the House for such information as they might possess concerning General Wilkinson, and then the discussion of Mr. Randolph's original motion continued.

On January 13² the House, by 72 yeas to 49 nays, agreed to Mr. Randolph's resolution.

Resolutions providing for an investigation by the House were proposed during this discussion, but were withdrawn or refused consideration.

The House then ordered that copies of the papers and information relative to the conduct of General Wilkinson, that had been laid on the Clerk's table, be transmitted to the President of the United States, and Messrs. Randolph and Eppes were appointed a committee to take the papers and the resolution to the President.

Mr. John Rowan, of Kentucky, then offered the following resolution,³ drawn evidently for the purpose of meeting the constitutional objections to making the inquiry:

Resolved, That a special committee be appointed to inquire into the conduct of Brigadier-General Wilkinson, in relation to his having at any time, while in the service of the United States, either as a civil or a military officer, been a pensioner of the Government of Spain, or corruptly received money from that Government or its agents, and that the said committee have power to send for such persons and papers as may be necessary to assist their inquiries, and that they report the result to this House, to enable this House the better to legislate on subjects of the common weal, and our foreign relations, and particularly our relation with Spain, as well as on the subject of the increase of the Army of the United States, and its regulation.

Without division the House declined to consider this resolution.

On a vote by yeas and nays the House agreed unanimously to this resolution:⁴

Resolved, That the President of the United States be requested to lay before the House of Representatives all the information which may at any time, from the establishment of the present Federal Gov-

¹Journal, pp. 110, 111; Annals, pp. 1296 &—1328.

³Journal, p. 127; Annals, p. 1461.

²Journal, pp. 125–127; Annals, pp. 1434–1461.

⁴Journal, p. 126; Annals, p. 1460.

ernment to the present time, have been forwarded to any Department of the Government touching a combination between the agents of any foreign government and citizens of the United States for dismembering the Union, or going to show that any officer of the United States has at anytime corruptly received money from any foreign government or its agents, distinguishing as far as possible, the period at which such information has been forwarded, and by whom.

On January 20¹ President Jefferson sent to the House a message stating that some days previous to the adoption of the resolution of the House a court of inquiry had been constituted in the case of General Wilkinson, and that the papers and information transmitted from the House had been forwarded to the judge-advocate of that court. The message also transmitted to the House such information as the Executive Department of the Government had on the subject involved in the resolution of inquiry, and explained that certain other documents had been destroyed, and that one document, a confidential letter, had been withheld, but that the writer of the letter was to be summoned before the court of inquiry to give in legal form the information contained in the letter.

The President also assured the House that the duties which the information sent by the House devolved upon him would be exercised with rigorous impartiality.

On February 4² the President transmitted additional documents on the subject of the inquiry, and on April 25 the House transmitted to the President additional papers relating to General Wilkinson.

On February 3, 1809³ Mr. Randolph rose in his place and said that among the duties and rights of the House was none so important as its control over the public purse which it possessed under the Constitution. The mere form of appropriation was not all. The House should rigorously examine into the application of the money thus appropriated. Therefore, he moved this resolution, which was agreed to without debate or division:

Resolved, That a committee be appointed to inquire whether any advances of money have been made to the Commander in Chief of the Army by the Department of War contrary to law.

Mr. Randolph was made chairman of the committee, and in due time reported.

1727. In 1810 the House, after mature consideration, determined that it had the right to investigate the conduct of General Wilkinson, although he was not an officer within the impeaching power of the House.

At the first investigation of charges against General Wilkinson the proceedings were ex parte, but at the second inquiry the House voted that he should be heard in his defense.

The House having investigated charges against General Wilkinson, of the Army, the results were transmitted to the President by the hands of a committee.

An instance wherein the precedents of Parliament were invoked and discussed.

¹ Journal, p. 136; Annals, p. 1482.

² Journal, p. 159; Annals, p. 1564.

³ Second session Tenth Congress, Journal, p. 506 (Gales & Seaton ed.); Annals, pp. 1330, 1331.

On March 21, 1810,¹ Mr. Joseph Pearson, of North Carolina, proposed this resolution:

Resolved, That a committee be appointed to inquire into the conduct of Brig. Gen. James Wilkinson in relation to his having, at any time, whilst in the service of the United States, corruptly received money from the Government of Spain, or its agents, or in relation to his having, during the time aforesaid, been an accomplice, or in any way concerned with the agents of any foreign power, or with Aaron Burr, in a project against the dominions of the King of Spain, or to dismember these United States; that the said committee inquire generally into the conduct of the said James Wilkinson as brigadier-general of the Army of the United States; that the said committee have power to send for persons and papers and compel their attendance and production, and that they report the result to this House.

On April 3 the resolution was considered at length. It was urged in its favor² that the House, as the grand inquest of the nation, had a right to make this inquiry. The English House of Commons had inquired into the charge that the Duke of York, commander in chief of the army and second son of the Monarch, had speculated in commissions. If the House of Commons could do that, could not this House inquire into the conduct of a commander in chief charged with betraying the nation to the foreigner? If the House had not the absolute power of removing the commander in chief, they at least had the power of requesting the President of the United States to remove him, and if the President should not do it, the House could say that there should no longer be an Army with a commander at its head. If the powers of the House were to be circumscribed by the strict letter of the Constitution³ where would be found the power for the investigation in 1801 of the expenses of a previous Administration which had gone out of office? It was not a necessary appendage of the power of impeachment. The true construction of the powers of the House with respect to investigation, other than for the purpose of impeachment, was that (1) the House had the power to inquire to inform themselves and the nation, and (2) the power to inquire with a view to future legislation. The legislature and the people had the right to know how the money drawn by taxation had been applied. Also the House had the right to inquire as incidental to the impeaching power, for how was a President to be impeached for protecting a corrupt officer until the officer should be proven to be corrupt? It was admitted to be true that under the Constitution no military officer could be impeached, but it did not follow that the House had no right to inquire into the state of the Army. Having undoubtedly the right to inquire into the state of the Army, they also had the right to inquire into the conduct of the individuals composing it. If this was not so it followed that the Army belonged to the President and not to the nation.⁴

In opposition to the resolution it was argued that the example of the House of Commons could not be followed safely, because the Commons had power over the Constitution, while the House of Representatives had only such powers as the Constitution conferred upon them. Among the powers granted to the House by the Constitution no gentleman could find the authority for what they now proposed to

¹ Second session Eleventh Congress, Journal, pp. 306, 339, 343–346 (Gales & Seaton ed.); Annals, pp. 1606, 1727–1757.

² By Mr. Timothy Pitkin, Jr., of Connecticut.

³ Argument of Mr. Daniel Sheffey, of Virginia.

⁴ Argument of Mr. Nathaniel Macon, of North Carolina.

do.¹ The Executive, the House, the Senate, each had its orbit and its responsibilities. It was now proposed that the House step in between the Executive and his duties.² Congress had no power to impeach a military officer, and to say that these proceedings were a step toward impeachment of the Executive was to assign a motive not revealed by the resolution or really intended. Only for purposes of impeachment was the House the grand inquest of the nation, and even then they could not compel the attendance of the civil officer whom they intended to impeach. They could compel the attendance only of their own Members. Congress could prescribe rules for the government of the Army, and if those rules were not sufficient to bring the offender to justice it was the fault of the Congress which had made them. By assuming the jurisdiction of the courts, either civil or military, the House would degrade its legislative character.

The resolution was voted on in two portions, the first clause being agreed to, yeas 87, nays 24; and the second clause, beginning with the words "That the said committee inquire generally," etc., was agreed to, yeas 78, nays 31. The whole resolution was then agreed to, yeas 80, nays 29.

On April 20,³ a letter from General Wilkinson asking that an impartial tribunal be constituted to try him was presented to the House by the Speaker, but after being read was not acted on, the House even refusing to refer it to the Secretary of War.⁴

On May 1⁵ the committee made their report. It consisted of a mass of evidence, but no recommendations for action. The committee stated in the course of debate that General Wilkinson had not expressed a wish to appear before them. Their report states that they issued a subpoena duces tecum to General Wilkinson, requiring him to submit to the committee certain papers, and that he sent papers in response to this, but upon examination they did not include certain of the papers demanded, and the committee had been unable to obtain them. The papers which the committee wished to obtain they had applied for at first from the Secretary of War, but were informed that they had been taken from that Department by General Wilkinson.

When the report was presented there was objection to it on the ground that the proceedings had been *ex parte*, General Wilkinson not having been invited to appear before the committee; but it was urged in response that examinations for impeachment were in the first instance *ex parte*.

At the next session of the Congress, on December 18, 1810,⁶ the continuation of the inquiry⁷ was authorized by the presentation anew of the original resolution with the addition of these words: "And that the said James Wilkinson be notified by the committee of the time and place of their sitting, and be heard in his defense." This addition was approved, 89 to 20, after considerable debate, in which it was

¹ Argument of Mr. John Smilie, of Pennsylvania.

² Argument of Mr. John Taylor, of South Carolina.

³ Journal, p. 383; Annals, pp. 1932, 1933.

⁴ Journal, p. 392.

⁵ Journal, p. 421; Annals, pp. 2032, 2048.

⁶ Third session Eleventh Congress, Journal, pp. 450–452; Annals, pp. 432–450.

⁷ At this time business before a committee at the end of a session fell with the session.

objected that this addition would make the resolution still more unconstitutional, because it would make the proceeding a trial of General Wilkinson. The resolution in the amended form was agreed to, yeas 79, nays 36.

On February 26¹ the report of the committee was submitted to the House. A motion was first made to refer the report to the Committee of the Whole, and it was determined in the negative, yeas 43, nays 81. Then it was moved that the report with the documents accompanying be transmitted to the President of the United States. A proposition was made to amend by adding the words:

Together with the report of a select committee, made to the House at the last session of Congress, on the same subject, with the documents accompanying the same.

Objection was made on the ground that the report of the preceding session had been based on *ex parte* examination. The amendment was disagreed to, yeas 88, nays 32. The motion to transmit the report of the present session to the President was then agreed to, yeas 76, nays 42.

Mr. Bacon and Mr. Bibb were appointed a committee to transmit the report and accompanying documents to the President.

On March 1² Mr. Bibb reported that the committee had performed the service.

1728. In 1861 the two Houses, by concurrent action, assumed without question the right to investigate the conduct of the war.—On December 9, 1861,³ the Senate agreed to the following:

Resolved by the Senate (the House of Representatives concurring), That a joint committee of three Members of the Senate and four Members of the House of Representatives be appointed to inquire into the conduct of the present war; that they have power to send for persons and papers, and to sit during the sessions of either House of Congress.

In the debate in the Senate Mr. James W. Grimes, of Iowa, declared it the right and duty of Congress to make the investigation, and cited as a precedent the action of the House of Representatives in investigating in 1792 the St. Clair disaster and to action of the House in 1813.⁴ The debate touched only briefly on the question of constitutional authority to make such an investigation.

On December 10, in the House of Representatives, the resolution was agreed to without debate.

1729. The House very early overruled the objection that its inquiry into the conduct of clerks in the Executive Departments would be an infringement on the Executive power.—On January 16, 1818,⁵ Mr. John Holmes, of Massachusetts, offered this resolution:

Resolved, That a committee be appointed to inquire whether any or what clerks or other officers in either of the Departments, or in any office at the seat of the General Government, have conducted themselves improperly in their official duties, and that the committee have power to send for persons and papers.

Objection being made that the House would, by adopting this resolution, assume power over the Departments that belonged to the Executive and would

¹ Journal, pp. 578–582; Annals, pp. 1030–1032.

² Journal, p. 606.

³ Second session Thirty-seventh Congress, Journal, p. 56; Globe, pp. 29–32, 40.

⁴ Apparently the precedent of 1810 is meant.

⁵ First session Fifteenth Congress, Journal, pp. 152, 153; Annals, p. 783.

thus impair Executive responsibility, it was answered that the House was in the relation of a grand jury, to the nation, and that it was the duty of the House to examine into the conduct of public officers.

The resolution was agreed to, and the committee was appointed.

1730. Having the constitutional right to concur in appropriating the public money, the House has exercised also the right to examine the application of those appropriations.—On December 10, 1819,¹ Mr. Henry R. Storrs, of New York, introduced a resolution, explaining its object by saying that if there was any one point on which the House should be tenacious of its prerogatives, it was upon its constitutional right of originating revenue bills, and its concurrent right, with the Senate, of denoting, according to their own discretion, the manner in which the public moneys should be appropriated and applied.

The resolution, which was agreed to, was as follows:

Resolved, That a committee be appointed to inquire and report to this House whether any of the public moneys appropriated by Congress for the pay and subsistence of the Regular Army of the United States since the 4th day of March, 1815, have been applied to the support of any army or detachment of troops raised without the consent of this House or the authority of Congress.

Mr. Storrs was appointed chairman of the committee, and on February 28, 1820,² he made a report of the facts, which disclosed irregularities of the nature referred to in the resolution, and assumptions of power by the commanding officer, General Jackson. The report concludes:

The House having authorized the committee to report by bill, they have devoted their attention to the devising of some legislative remedies against the recurrence of these disorders. To prescribe the principles of the Constitution by legislative enactments might tend to impair its high and uncontrollable sanctions, and the faithful discharge of the duties of the several committees of the House furnish an adequate remedy against all abuses in the public expenditure. The committee, therefore, submit the facts contained in this report and the documents which establish them, referring them to the discretion of the House.

1731. In authorizing an investigation of the Bank of the United States in 1832 a distinction was drawn between the public relations of the bank to the Government and its dealings with private individuals.

The House sometimes fixes a date before which a committee shall report.

On March 14, 1832,³ the House was considering this resolution, offered on a previous day by Mr. Augustin S. Clayton, of Georgia:

Resolved, That a select committee be appointed to examine into the affairs of the Bank of the United States, with power to send for persons and papers, and to report the result of their inquiries to this House.

Mr. John Quincy Adams, of Massachusetts, criticised this resolution as proposing an investigation not within the power of the House; and therefore, to prevent improper inquiry, he proposed an amendment following the words of the charter and the precedent of the investigation of 1819:

¹ First session Sixteenth Congress, Journal, p. 31 (Gales & Sealon ed.); Annals, p. 717.

² Annals, p. 1542.

³ First session Twenty-second Congress, Journal, pp. 487–494; Debates, pp. 2160–2164.

Strike out all after the word “Resolved” and insert:

That a select committee be appointed to inspect the books and examine into the proceedings of the Bank of the United States, to report thereon, and to report whether the provisions of its charter have been violated or not; that the said committee have leave to meet in the city of Philadelphia, and shall make their final report on or before the 21st of April next; that they shall have power to send for persons and papers, and to employ the requisite clerks; the expense of which shall be audited and allowed by the Committee of Accounts, and paid out of the contingent fund of the House.

In the course of the debate Mr. James K. Polk, of Tennessee, criticised the amendment as placing upon the committee a limitation as to the time within which they should make their report. He thought that there was no precedent for this.

Mr. Adams’s amendment was agreed to, yeas 106, nays 92. The resolution as amended was then agreed to.

In filing, his views on May 14, as a member of the minority of this investigating committee, Mr. Adams developed his views more fully. He said:¹

The amended resolution adopted by the House was predicated on the principle that the original resolution presented objects of inquiry not authorized by the charter of the bank, nor within the legitimate powers of the House, particularly that it looked to investigations which must necessarily implicate not only the president and directors of the bank, and their proceedings, but the rights, the interests, the fortunes, and the reputation of individuals not responsible for those proceedings, and whom neither the committee nor the House had the power to try, or even to accuse before any other tribunal. In the examination of the books and proceedings of the bank the pecuniary transactions of multitudes of individuals with it must necessarily be disclosed to the committee, and the proceedings of the president and directors of the bank, in relation thereto, formed just and proper subject of inquiry—not, however, in the opinion of the subscriber, to any extent which would authorize them to criminate any individual other than the president, directors, and officers of the bank of its branches—nor them, otherwise than as forming part of their official proceedings. The subscriber believed that the authority of the committee and of the House itself did not extend, under color of examining into the books and proceedings of the bank, to scrutinize, for animadversion or censure, the religious or political opinions even of the president and directors of the bank, nor their domestic or family concerns, nor their private lives or characters, nor their moral, or political, or pecuniary standing in society; still less could he believe the committee invested with a power to embrace in their sphere of investigation researches so invidious and inquisitorial over multitudes of individuals having no connection with the bank other than that of dealing with them in their appropriate business of discounts, deposits, and exchanges.

Mr. Adams shows that the majority of the committee did not, however, follow these principles, but investigated the personal accounts of private individuals, such as several proprietors of well-known newspapers, although no compulsory process was issued against one citizen who declined to give his attendance.

1732. In 1834 the directors of the Bank of the United States resisted the authority of the House to compel the production of books of the bank before an investigating committee.

The investigation of the Bank of the United States in 1834 was objected to on the ground that it involved a general search of the affairs of private individuals.

The committee appointed to investigate the Bank of the United States in 1834 held that its proceedings should be confidential, not to be attended by any person not invited or required.

¹ Debates, p. 54 of Appendix.

Minority views were filed in 1834 by members of the committee appointed to investigate the affairs of the Bank of the United States.

A form of subpoena issued in 1834 and criticised as defective.

On March 18, 1834,¹ the Committee of Ways and Means, to whom had been committed the report of the Secretary, of the Treasury of his reasons for ordering the public deposits to be removed from the Bank of the United States, made a report recommending the adoption of four resolutions. The first three of these expressed the opinion that the bank ought not to be rechartered; that the public deposits ought not to be restored to it; and that the State banks, under suitable regulations, should be continued as places of deposit of public money. The fourth resolution was as follows:

Resolved, That, for the purpose of ascertaining, as far as practicable, the cause of the commercial embarrassment and distress complained of by numerous citizens of the United States, in sundry memorials which have been presented to Congress at the present session, and of inquiring whether the charter of the Bank of the United States has been violated, and also what corruptions and abuses have existed in its management; whether it has used its corporate power, or money, to control the press, to interfere in politics or influence elections, and whether it has had any agency, through its management or money, in producing the existing pressure; a select committee be appointed to inspect the books and examine into the proceedings of the said bank, who shall report whether the provisions of the charter have been violated or not, and also what abuses, corruptions, or malpractices have existed in the management of said bank, and that the said committee be authorized to send for persons and papers, and to summon and examine witnesses on oath, and to examine into the affairs of the said bank and branches; and they are further authorized to visit the principal bank, or any of its branches, for the purpose of inspecting the books, correspondence, accounts, and other papers connected with its management or business; and that the said committee be required to report the result of such investigation, together with the evidence they may take, at as early a day as practicable.

This resolution was agreed to on April 4,² and the following committee were appointed: Messrs. Francis Thomas, of Maryland, Edward Everett, of Massachusetts, Henry A. Muhlenberg, of Pennsylvania, John Y. Mason, of Virginia, William W. Ellsworth, of Connecticut, Abijah Mum. jr., of New York, and Robert T. Lytle, of Ohio.

The committee reported on May 22,³ the minority also filing views:⁴

The proceedings of the committee, in the form of extracts from its journal, are appended to the report, and show that the committee met at the North American Hotel at Philadelphia, on April 23, and informed the president of the bank that they would be ready to proceed to business on the morrow.

April 24 the committee were informed by officials of the bank that arrangements would be made to accommodate them at the bank, and that a committee of seven members of the board of directors had been appointed

to receive the committee of the House of Representatives of the United States, and to offer for their inspection such books and papers of the bank as may be necessary to exhibit the proceedings of the corporation according to the requirements of the charter.

¹ First session Twenty-third Congress, Journal, p. 422.

² Journal, pp. 487–489.

³ Journal, p. 650.

⁴ The report, with extracts from the Journal of the committee and views of the minority appear as No. 481 in House Reports first session Twenty-third Congress. Minority views were also filed in the preceding investigation in 1832.

On April 26 the investigating committee agreed to and forwarded to the committee of the directors resolutions stating "that the proceedings, investigations, and examinations of this committee of the books, papers, and affairs of the bank, shall be confidential, unless otherwise ordered by the committee;" and "that the investigations of this committee into the affairs, management, and concerns of the Bank of the United States shall be conducted without the presence of any person who is not required or invited to attend the examinations of this committee."¹

To this the board of directors responded by resolving that they could not "consent to give up the custody and possession of the books and papers of the bank, nor to permit them to be examined but in the presence of the committee appointed by the board." Considering the investigation "accusatory" in nature, the directors also thought it proper that the institution and individuals concerned should have the opportunity to be present, by their appointed representatives, at all examinations touching their character and conduct. But they protested against a secret or partial investigation.

The investigating committee, replying under date of April 29, accept the offer made by the directors of the use of a room at the bank, but with a statement of belief that

the room thus offered would be exclusively for its occupation and that of those whose attendance might be, by the committee, required or assented to.

The committee also

claims the right, to be exercised at its discretion, to compel the production of the books and papers of the bank for inspection, and to inspect the same in such mode as to the committee may seem best calculated to promote the object of its inquiry.

The committee denies "accusatory" intentions, does not purpose making a secret or partial examination, states that it will afford every person whose character or conduct may seem to be affected by the investigation a full opportunity of explanation and defense, but

claims the right of determining the time and mode of giving such privilege, and therefore can not recognize the right of the directors to prescribe the course to be pursued by this committee in making its examinations.

¹In their minority views Messrs. Everett and Ellsworth say: "The first resolution was regarded merely as an understanding, on the part of the committee of investigation, that no publicity would be given by them, until otherwise ordered, to the matters that might appear in the course of the examination. The undersigned assented to this resolution, with the understanding of the parliamentary law that the sittings of every committee are open unless ordered to be secret by the House; and that it was not in the power of the present committee, by a vote of their own, either to shut their doors or impose secrecy on any persons who might attend. But they assented to the injunction of confidence in conformity with a usage which has prevailed in other committees of inquiry of the House, for their own convenience, as a rule binding on themselves, and with the express reservation that the adoption of this resolution should in no degree involve an assent to the principle asserted in the second. To that principle, viz, that no person should be permitted to attend during the inspection of the books of the bank and the examination of its proceedings, etc., * * * the undersigned were strenuously opposed. * * * This claim was regarded by the undersigned as being without foundation and objectionable. In the first place, as has been observed, they believed it to be contrary to the *lex parliamentaria* for a committee of inquiry, on its own authority, to claim the right of holding its sittings, except when deliberating and voting, in secret. It can only be constituted a secret committee by express order of the House. (See pp. 44, 45, of Report No. 481, House of Representatives, first session Twenty-third Congress.)

Again, on April 30, the committee, reiterates

that they have the power to compel the production of the books and papers of the bank for inspection; that they have the power to make such inspection in the presence of those only who may be, by the committee, required or invited to attend; and to exclude from their room all persons who, by their presence, may in any degree tend to impede the progress of the inspection of the books and papers or incommode the members of the committee in the discharge of the high duties devolved on them by the House of Representatives.

The committee also in this communication ask if they are to have the exclusive use of the room at the bank.

The chairman of the committee of directors, replying under date of May 1, reiterates the previous decision that the custody and possession of the books of the bank can not be given up, and that they can not be examined except in the presence of the committee appointed by the board.

On May 2 the committee of investigation resolved that, as they could not have exclusive use of the room at the bank, they would hold their sittings at their room in the North American Hotel, and that the president and directors of the Bank of the United States be required to submit for the inspection of the committee at the hotel at 11 a. m. May 3 certain specified books of the bank.

The directors replied that they could not let the books and papers go out of their care and custody, or out of the banking house, as such action would be a violation of their duty, and might be deemed an abandonment of their right to be present by themselves, or by their committee or agents, at the examination.

On May 5 the investigating committee decided to go to the bank and require of the president or other officers the production of the books of the bank for the inspection of the committee. Accordingly they proceeded to the bank and requested the president and first cashier to produce the books already demanded. The president and cashier replied that they could not comply with the request, as the books were in the custody of the board of directors, who had appointed a committee to exhibit them.

On May 7 the committee of investigation received a notification from the committee of directors that the latter would be ready May 7 at 11 a.m. to exhibit books of the bank; and accordingly the committee of investigation proceeded to the bank, and called for the

minute books, containing the proceedings of the directors of the bank, and the expense book and vouchers for expenses incurred.

The committee of the directors retired to deliberate, and after a time presented to the investigating committee their resolutions. They declare that the investigation proposed involves two branches, one to ascertain whether the charter had been violated, and the other very general and indefinite; that the calls for books embrace a very wide range, including an extensive examination of the transactions, acts, and accounts of individuals, thus instituting a general search which would be an injurious invasion of private rights; that in the opinion of the directors the inquiry can only be rightfully extended to alleged violations of the charter and ought to be conducted according to certain principles and rules. Therefore the investigating committee are "respectfully required" to state specifically in writing

the purposes for which the books and papers called for are to be inspected; and, if it be to establish a violation of the charter, to state specifically and in writing what are the alleged violations to which the evidence is alleged to be applicable. The suggestion is also made that the investigating committee should furnish a specification of all the charges intended to be inquired into, and proceed with them in order.

In response to this communication the investigating committee stated that they were engaged not in a prosecution, but an inquiry, and therefore could not be "required" to specify supposed violations of the charter or state specifically the purposes for which the books were to be inspected. But the committee proceeded to request of the directors the credit books and pay lists of the bank to ascertain "whether it has used its corporate powers or money to control the press, to interfere in politics, or influence elections;" also the minute books, etc., to ascertain whether the bank "has had any agency, through its management or money, in producing the present pressure," and whether the directors have violated the charter of the bank.

The committee of the board of directors replied by declining to comply with the calls in any other manner than already laid down.

On May 9 the investigating committee authorized the issuing of the following subpoena duces tecum:

By Authority of the House of Representatives of the United States.

To BENJAMIN S. BONSALE,

Marshal of the Eastern District of Pennsylvania:

You are hereby commanded to summon Nicholas Biddle, president; Emanuel Eyre, Matthew Newkirk, John Sergeant, Charles Chauncey, John S. Henry, John R. Neff, Ambrose White, Daniel W. Coxe, John Goddard, James C. Fisher, Lawrence Lewis, John Holmes, and William Platt, directors of the Bank of the United States, to be and appear before the committee of the House of Representatives of the United States appointed on the 4th day of April, 1834, "for the purpose of ascertaining," etc. [here follows the portion of the resolution specifying the duties of the committee], in their chamber in the North American Hotel, in the city of Philadelphia, and to bring with them the credit books of said bank, showing the indebtedness of individuals to said bank on the 10th day of May instant, at the hour of 12 o'clock m., then and there to testify touching the matters of said inquiry, and to submit said books to said committee for inspection.

Herein fail not, and make return of this summons.

Witness the seal of the House of Representatives of the United States, and the signature of Hon. Francis Thomas, chairman of the said committee, at the city of Philadelphia, this ninth day of May, in the year one thousand eight hundred and thirty-four.

[SEAL.]

FRANCIS THOMAS.

Attest:

W. S. FRANKLIN,

*Clerk House of Representatives U. S.*¹

¹The directors in their reply reserved objection to the legality of this process and the service, but did not state their grounds. The minority of the committee in their views (p. 61 of report) say: "The form of the process and its mode of service are believed by the undersigned to be not less objectionable than its object, and equally fatal to its legal character; but on this topic they omit to dwell." Rule 11 of the House was as follows at that time: "All acts, addresses, and joint resolutions shall be signed by the Speaker; and all writs, warrants, and subpoenas issued by order of the House shall be under his hand and seal, attested by the Clerk." This rule has been somewhat changed since. (See sections 251 of Volume I and 1313 of Volume II of this work.)

At the appointed time President Biddle and the associates named in the subpoena appeared, and Mr. Sergeant stated—

that they came in pursuance of the precept served on them individually by the marshal, and that he would read their individual answer to it.

This answer was in writing and signed by the respondents. It declared first that they did not produce the books,

because they are not in the custody of either of us, but, as has been heretofore stated, of the board, whose views upon this subject, we would take occasion to say, have already been respectfully communicated to the committee of investigation.

As to testifying, the paper continues:

Each of us now says for himself that, considering the nature of the proceeding and the character of the inquiry, even as explained in the resolution of the committee of investigation of the 7th instant, and considering that as corporators and as directors we are parties to the proceeding, we do not consider ourselves bound to testify, and therefore respectfully decline to do so.

The committee of investigation, on May 22, reported to the House, recommending the following resolutions:

Resolved, That, by the charter of the bank of the United States, the right was expressly reserved to either House of Congress, by the appointment of a committee, to inspect the books and to examine into the proceedings of the said bank, as well as to ascertain if at any time it had violated its charter.

Resolved, That the resolution of the House of Representatives passed on the 4th of April, 1834, for the appointment of a committee, with full powers to make the investigations embraced in said resolution, was in accordance with the provisions of the charter of said bank and the power of this House.

Resolved, That the president of the board of directors of the bank of the United States, by refusing to submit for inspection the books and papers of the bank, as called for by the committee of the House of Representatives, have contemned the legitimate authority of the House, asserting for themselves powers and privileges not contemplated by the framers of their charter, nor in fairness deducible from any of the terms or provisions of that instrument.

Resolved, That either House of Congress has the right to compel the production of any such books or papers as have been called for by their committee, and also to compel said president and directors to testify to such interrogatories as were necessary to a full and perfect understanding of the proceedings of the bank at any period within the term of its existence.

Resolved, That the Speaker of this House do issue his warrant to the Sergeant-at-Arms, to arrest Nicholas Biddle, president; Manuel Eyre, Lawrence Lewis, Ambrose White, Daniel W. Coxe, John Holmes, Charles Chauncey, John Goddard, John R. Neff, William Platt, Matthew Newkirk, James C. Fisher, John S. Henry, and John Sergeant, directors of the Bank of the United States, and bring them to the bar of this House, to answer for their contempt of its lawful authority.

The report of the committee, made by Mr. Thomas, in support of the resolutions, calls attention to the fact that the bank was chartered for a great public purpose, to act as an agent of the Government in the collection and disbursement of money, and that the United States holds seven millions of the stock of the bank. The House of Representatives is the grand inquest of the nation, and as such has power to inspect all departments of the Federal Government. That there might be no doubt of the existence of this power it had been expressly reserved in the 23rd section of the charter of the bank, which provides—

that it shall be at all times lawful for a committee of either House of Congress, appointed for that purpose to inspect the books and examine into the proceedings of the corporation hereby created, and to report whether the provisions of its charter have been violated or not.

Thus the only restriction in the charter of the bank was one relating to the committee, and not to the House, and had reference, not to the extent of the examination, but to the character of the report to be made. The object of this specification was seen in the clause of the charter providing for certain legal action in the courts if the committee should find that the charter had been violated.

The committee argue that any doubt as to the reserve power of the House had long been settled by the precedents of the examinations by committees of the House in 1818 and 1832. Those committees examined into the general management of the bank, the transactions of private individuals were freely and fully examined, and were published. The managers of the bank on those occasions did not question the authority of the committees to make the examinations.

The committee say that in providing by resolution that the proceedings of the committee should be confidential they followed the precedent of the committee of 1832.

The minority of the committee, Messrs. Everett and Ellsworth, contended that the charter was a contract proposed by the Government to the stockholders, that the power of visitation and examination was one onerous to the stockholders, and to attempt to enlarge it by construction was to interpolate new and oppressive conditions into the contract. A resolution of the House passed in virtue of its general power of inquisition could not enlarge the specific provisions of law. The fact that the Government was a stockholder might give the Government rights in the matter which should not be claimed by the House, which was only one department of the Government. The law gave the House certain power in this case, and it was not within its power to give the committee a general power of search. The minority did not deny the power of the House to inquire into any alleged abuse or corruption whatsoever, and they believed that the committee was authorized to make such inquiry, but those inquiries should be conducted according to the charter and according to the principles of equity and constitutional right. The power of the committee did not authorize it to prosecute a secret inquiry of indefinite character. It did not extend the right of inspecting the books, granted for one purpose alone, so as to authorize their inspection for purposes totally different. It did not empower the committee to issue warrants of general search, and compel the appearance of citizens and the production of papers, not in proof or disproof of charges against third persons, but to enable the committee to find out from the papers whether those who should bring them were themselves guilty of misdemeanors. A general search was repugnant to the Constitution. The minority reviewed the proceedings at length, criticizing, among other things, the legality of the process issued to compel the attendance of the directors.

On May 29,¹ Mr. John Quincy Adams presented to the House resolutions declaring that any attempt to bring to the bar of the House the directors would be unconstitutional. These resolutions were not acted on.

On June 25² Mr. Thomas presented a resolution to make the consideration of the report of this committee a continuing order of the House. The question

¹ Journal, p. 664.

² Journal, pp. 831, 832.

of consideration being raised, the House voted to consider it—yeas 97, nays 65. But after consideration for a time, the resolution was superseded by privileged business. Thereafter, until the final adjournment of the session on June 30, the House was engaged in other business, so the report of the committee was not acted on.

1733. The general authority of the House to compel testimony and the production of papers in an investigation, and the relation of this right to the rights of individuals to privacy in business affairs, were discussed in 1837.—On January 3, 1837,¹ on motion of Mr. James Garland, of Virginia, the House agreed to the following:

Resolved, That a committee of nine Members be appointed, whose duty it shall be to inquire whether the several banks employed for the deposit of the public money have all, or any of them, by joint or several contract, employed an agent to reside at the seat of government to transact their business with the Treasury Department; what is the character of the business which he is so employed to transact, and what compensation he receives; whether said agent, if there be one, has been employed at the request or through the procurement of the Treasury Department; whether the business of the Treasury Department with said banks is conducted through said agent; and whether, in the transaction of any business confided to said agent, he receives any compensation from the Treasury Department; and that said committee have power to send for persons and papers.

The following were appointed the committee: Messrs. Garland, Franklin Pierce, of New Hampshire; John Fairfield, of Maine; Henry A. Wise, of Virginia; Ransom H. Gillett, of New York; Henry Johnson, of Louisiana; Thomas L. Hamer, of Ohio; Joshua L. Martin, of Alabama, and Balie Peyton, of Tennessee.

In the course of the investigation in the committee Mr. Peyton offered this resolution:²

Resolved, That R. M. Whitney be summoned to appear before the committee, at the room of the Committee on Commerce, on Thursday morning next, at 10 o'clock, and that he be required to bring with him the books, papers, and memoranda relating to his agency with the deposit banks; that he produce all the correspondence between himself and any person or bank going to show the existence of that agency; that he produce the originals, where in his power, and copies where the originals are not in his possession; that he produce all the contracts which he has made or proposed with and to any bank, or correspondence held in relation to the public deposits; all books, papers, etc., going to show the amount of his compensation, and the character of the business which he is employed to transact.

To the adoption of this resolution Mr. Martin objected, on the ground that he doubted the power of the committee, on the showing then before them, to require the production of all the papers therein required, and moved for a division of the resolution, so as to take the question upon ordering the subpoena for R. M. Whitney, and the subpoena duces tecum to him, separately; which motion was withdrawn, upon the understanding with the committee generally that the question of power to enforce the demand, if objected to by Mr. Whitney, to whom the subpoena duces tecum was directed, should be reserved. Whereupon the resolution was adopted without further objection.

On January 25³ Mr. Whitney, who had previously declined to answer certain

¹ Second session Twenty-fourth Congress, Journal, pp. 164, 165; Globe, pp. 69, 73.

² House Report, first session Twenty-fourth Congress, No. 193, p. 2 of Journal of Report.

³ Journal of Report, No. 193, pp. 67–80.

questions and to produce certain papers, filed with the committee a written protest, which was, by vote of the committee, ordered to be read.

In this protest the witness declared that the committee, in calling for an indefinite mass of papers, many of them private, had exceeded their inquisitorial power. The resolution under which they acted provided for three branches of investigation—first, the Treasury Department and its officers; secondly, “the several banks employed for the deposit of the public moneys;” and, lastly, himself. To the first branch of the inquiry he professed no relation, and in no manner would draw in question the power of the committee. He had answered freely every question strictly within the province of that branch of inquiry. As to the deposit banks, he denied that the mere fact of their having, in the course of their business, entered into a contract with a Department of the Government, gave one branch of the Congress any authority to examine into their business transactions or their relations with their agents. They were chartered under State laws, and were not at all under national control. There was no visitorial or supervising power over them in either branch of Congress. Even in the late Bank of the United States, chartered by Congress, it was thought necessary to confer that power by a special clause of the charter. And even then, when under examination by a committee authorized under this special provision, the bank had resisted the efforts of the committee to inquire into certain matters. The act of Congress regulating the deposits of the public moneys gave to the Secretary of the Treasury a modified right of inspection of the general accounts of the banks that should accept the public deposits, but this modified right of inspection did not imply any inherent power of Congress over the banks. It was merely a condition precedent to their being employed as depositories. As to himself personally the inquiry had two branches—first, as to whether he had been employed as agent of the banks through the procurement of the Treasury Department and had received compensation from that department; and, second, as to his business arrangements with such of the deposit banks as constituted him their agent. As to the first branch, relating as it did to the management of the Treasury Department and the disbursements of the public moneys, he had answered all questions and still held himself ready to answer all such; but the questions falling under the second branch he had not answered, on the ground that they were inquisitorial in their nature, going into the personal and private transactions and relations between himself and his employers.

I have already

[says the protest]

referred to the summons as in the nature of a subpoena duces tecum, by which myself and my papers were cited before your committee; how sweeping and indefinite are the number and the description of the papers comprehended in the citation; how deeply it searches into my correspondence—into the documents of my business and transactions—sweeping up even all the loose memoranda I may have kept relating to my agency (no matter to what other things the same memoranda may relate). All this appears on the face of the summons, and may be sufficiently inferred from the notice already taken of that document.

If the power to send for “papers,” which may be rightfully delegated to and exercised by a committee of Congress, be susceptible of any more reasonable limits than that of the power to send for “persons,” I am advised that it may be clearly reduced to two simple heads:

1. All that can be denominated public papers, as belonging to the public archives of any Department of the Government, and which may be required for the information of Congress upon any matter touching the public administration.

2. Such private papers in the hands of individuals as are necessary to the advancement of justice in the exercise of the judicative power of Congress, understanding that power as limited to impeachments. Then such private papers, and such only, are included as would, if produced, be competent evidence in a criminal prosecution and in a prosecution not against the party cited to produce the papers.

The rules of procedure, long established by the courts of ordinary judicature and sanctioned by veteran experience and wisdom as indispensable to the liberty and safety of the citizen, can not be dispensed with by Congress when it assumes the tribunal and exercises its constitutional functions of criminal judicature. Now, these rules have strictly limited and guarded the process for papers in criminal proceedings—as, indeed, in civil. The paper required must be described with reasonable certainty, so as to be distinguished and identified; above all, it must be made clearly to appear, before its production is required, to be competent and pertinent evidence to the issue, or, if the issue be not yet formed (as in the case of a presentment pending before a grand jury or an impeachment in course of preparation), still competent and pertinent evidence to the issue to be formed, in case the presentment be found true or the impeachment be preferred.

Therefore the witness concluded that the committee might not demand the production of a large and miscellaneous mass of private papers, the contents of which and the conclusions from which are utterly unknown beforehand. In his view the power to send for persons and papers did not go to this extent.

The committee did not attempt to compel Mr. Whitney to answer questions which he considered inquisitorial; but in their report they say:¹

It is not the purpose of the committee to enter into a long or detailed answer to said protest; they have not time, if they were disposed, nor is it necessary to do so. As relates to the resolution of the committee, the whole argument of the protest is based upon the idea that the committee has asserted a claim of power, in compelling the production of private papers and in examining into private transactions, which it has not done. The resolution is general, and calls for no specific paper; it calls generally for such papers, etc., as may refer to and shed light upon the inquiries directed by the House. The committee, in adopting this resolution, made it general, because they had no knowledge of the peculiar character of the papers held by the witness, whether they were of a purely private or public character, and could not, therefore, designate any particular paper for which to make a call, and because they thought it due to the witness himself that he might have the opportunity of producing such papers of a private character as he might deem necessary for the purpose of explanation if such explanation should be deemed necessary by him. Immediately following the adoption of the resolution referred to the committee made an express reservation of the question—what papers they would or would not compel the production of until the witness had determined for himself which he would or would not produce, having reference to the necessity of explanation as affecting himself. * * * The committee has not in a single instance attempted to enforce the production of any paper objected to by the witness. As to the question whether the House of Representatives has the power to direct the inquiries contained in the resolution organizing the committee, it is not deemed necessary to make any remark. In adopting the resolution it is presumed that the House well understood its power and its duty, and did not hastily institute inquiries beyond the reach of the one or the other. The committee does not claim for the House or itself the power to compel the deposit banks to expose their private concerns or private transactions to the scrutiny of the committee, nor has the committee in any instance demanded such exposure. Yet, while the committee does not assert any such claim of power, it holds it decidedly within the power of Congress to ascertain, by other competent and legal testimony, any of the transactions of the deposit banks which are calculated to affect the safety of the public funds, and to render some action on the part of Congress necessary for their security.

¹ House Report No. 193, p. 1.

1734. Members of the Presidents Cabinet, whose reputations and conduct have been assailed on the floor of the House, have sometimes asked for an investigation.—On February 1, 1805,¹ the Postmaster-General, Gideon Granger, having

received information from various sources, that both my public and private character and conduct have been arraigned on the floor of the House of Congress by a Member of that House, addressed a letter to the Speaker, asking an investigation. This letter was read to the House and referred to a committee.

1735. On April 3, 1850,² the Speaker, by unanimous consent, laid before the House a letter from Hon. George W. Crawford, Secretary of War, asking the House to investigate the charges made against him in connection with the Galphin claim. The letter, having been read, was referred to a select committee of nine members.

1736. Vice-President Calhoun asked the House, as the grand inquest of the nation, to investigate certain charges made against his conduct as Secretary of War, and the House granted the request.

The Vice-President was represented by a Member of the House before a committee of the House which was investigating charges against him.

The proceedings of an investigating committee having brought out statements reflecting on the character of a person not directly involved in the inquiry and not a Member of either House, the House refused to incorporate his explanation in the report.

In investigating charges of an impeachable offense, the committee permitted the accused to be represented by counsel and have process to compel testimony.

Investigating committees do not always confine themselves within the strict rules of evidence.

On December 29, 1826,³ the Speaker laid before the House the following communication from the Vice-President of the United States:

To the Speaker of the House of Representatives of the United States.

SIR: You will please to lay before the House, over which you preside, the inclosed communication, addressed to that body.

Very respectfully, yours, etc.,

J. C. CALHOUN.

The inclosed communication was addressed "to the honorable Members of the House of Representatives," and began:

An imperious sense of duty and a sacred regard to the honor of the station which I occupy compel me to approach your body, in its high character of grand inquest of the nation. * * * In claiming the investigation of the House I am sensible that under our free and happy institutions the conduct of public servants is a fair subject of the closest scrutiny; * * * but when such attacks assume the character of impeachable offenses and become in some degree official by being placed among the public records, an officer thus assailed, however base the instrument used, if conscious of innocence, can look for refuge only to the Hall of the immediate representatives of the people.

¹ Second session Eighth Congress, Journal, pp. 113, 331, 400 (Gales & Seaton ed.); Annals, p. 1110.

² First session Thirty-first Congress, Journal, p. 741; Globe, p. 628.

³ Second session Nineteenth Congress, Journal, pp. 109, 110; Debates, pp. 574, 576.

The letter goes on to state that charges had been filed in an Executive Department that he had, while Secretary of War, corruptly participated in the profits of a public contract. Therefore he challenged the freest investigation by the House. The letter was signed "J. C. Calhoun, Vice-President of the United States."

The House, without division, referred the communication to a select committee with power to send for persons and papers. Mr. John Floyd, of Virginia, was chairman of this committee, and Mr. John C. Wright, of Ohio, was second member.

On February 13, 1827,¹ Mr. Wright submitted a report, which was read and laid on the table.

Mr. Floyd "submitted to the House a paper, also purporting to be a report upon the same subject, and which contains the views of the minority thereof, in relation to the subject-matter of inquiry, which paper was read and also laid on the table."

The report states that immediately after the committee assembled they informed the Vice-President of their readiness to receive any communication that he might see fit to make. The Vice-President, in his response, expressed his wish that, to avoid the inconvenience of communication by letter, he might be represented by Mr. George McDuffie, a Member of the House. Mr. McDuffie had accordingly been admitted. The report then reviews the charges and testimony, gives the conclusions of the committee, and transmits the testimony and a written protest by Mr. McDuffie against the methods by which the committee had proceeded. This protest of Mr. McDuffie² was against what he termed the committee's departure—from the fundamental principles of judicial investigation and the established rules of judicial evidence.

In particular he objected that large quantities of testimony had been admitted relative to the general administration of the War Department, and disassociated from the specific charge committed to the committee; also that on that charge private letters of Major Vandeventer to Elijah Mix had been admitted as evidence against Mr. Calhoun, although they were, as lawyers well knew, "incompetent and improper testimony." Mr. McDuffie also protested against hearsay evidence.

Admitting that it is proper for the committee to assume inquisitorial powers in this investigation [he says], and in that character to ask of the witnesses not only what they know, but what they have heard from others, it must be exceedingly apparent that the only excusable purpose, even of an inquisitorial kind, for which such questions could be propounded, is the discovery of other witnesses, by whose evidence the charges might be established.

The report also shows that at the instance of Mr. McDuffie subpoenas were issued for witnesses to testify in behalf of the Vice-President.

The report proposed no action by the House, therefore the House disposed of it by ordering it to lie on the table and be printed, with the accompanying documents and the views of the minority.

After this had been done Mr. John Forsyth, of Georgia, by leave of the House, presented a letter signed C. Vandeventer, expressive of his regret that the committee had not accompanied their report by a communication of his explanatory of transactions as far as he was concerned with the subject of investigation, and praying that it might be received, and with accompanying documents be placed among the papers presented by the committee.

¹ Journal, pp. 294, 295; Debates, pp. 1128–1150.

² House Report No. 79, page 221.

Mr. Vandeventer, who was chief clerk of the War Department, considered that the testimony presented by the committee contained reflections on his conduct, and therefore he wished his explanation to accompany those reflections.

Mr. Wright stated that the committee had received several such communications; but as they did not consider them pertinent to the inquiry committed to them, they had returned them to the senders. The committee did not see why they should enter upon an investigation to exculpate these individuals any more than all the other witnesses. They could not be diverted from the main object of inquiry by unnecessary investigations. To append documents and arguments to the report of the committee for the purpose of exculpating a witness would be a novel procedure, leading to many perplexities.

It was pointed out, on the other hand, that this man was a public officer, who was about to be injured by the publication in a report of matter reflecting on his character. But the reply was made that the proper course in such a case was to do as the Vice-President had done—ask for an investigation.

The House, without division, decided not to print the communication with the report, but laid it on the table.¹

1737. President Jackson resisted with vigor the attempt of a committee of the House to secure his assistance in an investigation of his Administration.

The motion to lay on the table is used in committees.

On January 23, 1837,² the select committee appointed to investigate the Executive Departments of the Government agreed to a series of resolutions calling on the President and heads of Departments for information of various kinds. One of these resolutions was as follows:

Resolved, That the President of the United States be requested, and the heads of the several Executive Departments be directed, to furnish this committee with a list, or lists, of all officers or agents, or deputies, who have been appointed or employed and paid since the 4th of March, 1829, to the 1st of December last (if any, without authority of law, or whose Dames are not contained in the last printed register of public officers, commonly called the "Blue Book") by the President or either of the said heads of departments, respectively; and without nomination to, or the advice and consent of the Senate of the United States; showing the names of such officers or agents, or deputies; the sums paid to each; the services rendered; and by what authority appointed and paid; and what reasons for such appointments.

Resolved, That the various executive officers, in replying to the foregoing resolution, be requested, at the same time, to furnish a statement of the period at which any innovations, not authorized by law, (if such exist), had their origin, their causes, and the necessity which has required their continuance.

By order of the committee the chairman transmitted to the President of the United States a copy of the above resolutions. The copy transmitted in the letter of the chairman was attested by the clerk of the committee.

On January 27 Mr. Andrew Jackson, Jr., secretary of the President, entered the committee room and delivered to the chairman, Mr. Henry A. Wise, of Virginia, a letter addressed to Mr. Wise and giving the President's reasons for not complying

¹ Journal, p. 295; Debates, pp. 1144–1150.

² House Report No. 194, second session Twenty-fourth Congress, pp. 12, 13, 29–45; Journal of the committee, pp. 9, 10, 17, 23, 29, 45.

with the request of the committee. The President begins his letter by saying that the resolution adopted by the House authorizing the investigation raised an issue with his annual message, which had stated that the Executive Departments were in excellent condition. After referring to speeches made in the House by Mr. Wise and other Members on this subject, and the appointment of the special committee, he says:

The first proceeding of the investigating committee is to pass a series of resolutions, which, though amended in their passage, were, as understood, introduced by you, calling on the President and the heads of the Departments—not to answer to any specific charge; not to explain any alleged abuse; not to give information as to any particular transaction; but, assuming that they have been guilty of the charges alleged, calls upon them to furnish evidence against themselves. After the reiterated charges you have made, it was to have been expected that you would have been prepared to reduce them to specifications, and that the committee would then proceed to investigate the matters alleged. But, instead of this, you resort to generalities even more vague than your original accusations; and, in open violation of the Constitution, and of that well-established and wise maxim “that all men are presumed to be innocent until proven guilty, according to the established rules of law” you request myself and the heads of the Departments to become our own accusers, and to furnish the evidence to convict ourselves; and this call purports to be founded on the authority of that body in which alone, by the Constitution, the power of impeaching is vested. The heads of Departments may answer such a request as they please, provided they do not withdraw their own time and that of the officers under their direction from the public business to the injury thereof. To that business I shall direct them to devote themselves in preference to any illegal and unconstitutional call for information, no matter from what source it may come or however anxious they may be to meet it. For myself, I shall repel all such attempts as an invasion of the principles of justice, as well as of the Constitution; and I shall esteem it my sacred duty to the people of the United States to resist them as I would the establishment of a Spanish inquisition.

The President then lectures still further the chairman of the committee, and concludes with an expression of astonishment that the House should make such a call on the Executive when there were six standing committees of the House specifically charged with examining the details of expenditures in the Departments.

On January 30 Mr. Wise offered these resolutions in the committee:

Resolved, That the letter of the President of the United States, dated the 26th instant, addressed to the chairman of this committee and handed to him by the private secretary of the President in presence of the committee, is an official attack of the Executive upon the proceedings of the House of Representatives and of this committee, and upon the privileges of Members of both Houses of Congress, and opposes unlawful and unconstitutional resistance to the just powers of the House of Representatives and of the committee: Therefore,

Resolved, That the chairman of the committee be directed to report to the House his letter and the resolutions of this committee inclosed, addressed to the President, and the letter of the President in reply thereto, dated the 26th instant, and to submit to the consideration of the House the propriety and necessity of adopting measures to defend its proceedings; to protect the privileges of its Members; and to enforce its just powers and those of its committees; to enable this committee to discharge the duties devolved upon it by the resolution of the 17th instant, adopted by the House of Representatives.

These resolutions were laid on the table by a vote of 6 yeas, 3 nays.

On February 1 an attempt was made to consider and amend them, but it failed. The committee in their report say:

Neither did the committee discover in the letter of the President any attack upon the proceedings of the House or the privileges of its Members, for the plain reason that neither the House nor its Members have any privilege to call upon parties accused to criminate themselves. Consequently they

could not sanction the resolution offered by the chairman to censure the President for his emphatic repulsion of what he construed to mean charges of personal accusation, and calls for self-crimination; nor could they consent to put a stop to the public business by getting up a debate in the House to enforce any pretended "privilege" of the House or its committees to compel public officers to furnish evidence against themselves.

Mr. Wise, in his minority views, argues at length the proposition that the President, by his letter, invade the privileges and prerogatives of the House.¹

The various heads of Departments replied to the call of the committee in a manner similar to the reply of the President, stating that they could not furnish evidence to criminate themselves, as the committee had demanded.

1738. In 1837 a committee discussed the authority of the House in calling for papers from the Executive Departments and the kind of papers properly subject to its demand.—On March 3, 1837,² the select committee appointed on January 17 to inquire into the condition of the Executive Departments of the Government, made a report, which takes the following view of the power to send for persons and papers:

One of the powers conferred on the committee by the resolution of the House was the power to send for persons and papers. * * * At best, this is a vague and not well-defined power; incidental, and not derived from any express provision in the Constitution. In its exercise, therefore, there should be some limitation; and it should be carefully used only in cases where the direct legislation of Congress, the protection and enforcement of the privileges and rules of either House, or manifest public interest imperatively demand it. It is a judicial power, which Congress can exercise merely as a power incidental to the power "to make all laws which shall be necessary and proper."

To construe it into an unlimited power for a committee of this House to bring before them the persons of citizens from any part of the Union at their own arbitrary will, without just cause, or to compel the surrender of all papers which a committee might see fit to send for, would be to set up an incidental power of the House nowhere expressly recognized in the Constitution, which would totally annul one of the express provisions of the Constitution, to secure the citizen against these very outrages, viz, "the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures."

In applying this principle to the calls which were proposed, in this investigation, upon the President and heads of Departments, for statements and papers, the committee have considered that a public officer is not put without the pale of the protection afforded to other citizens against being required to furnish statements or evidence to accuse himself; and against unreasonable demands for papers not constituting a part of the public documents; and, in their opinion, the call for papers ought to be limited to such as are already made and on file in the Departments.

To every call for statements going to show any act of a public officer without authority of law, and for papers coming within the above description, the committee have uniformly responded in the affirmative, while, as a general rule, they have felt bound to reject all calls for statements touching motives and acts not shown to be unlawful, if proved, and for all real or supposed papers, private in their character, and not coming within the denomination of public papers on file.

If it be contended that this distinction enables a public officer to exclude from the files of his department whatever he chooses to consider private and which ought to be placed there, the answer is that this can not alter the powers of a committee of the House to send for papers nor change the nature of

¹The majority of the committee who made the report consisted of Messrs. Dutée J. Pearce, of Rhode Island; Henry A. Muhlenberg, of Pennsylvania; Edward A. Hannegan, of Indiana; Gorham Parks, of Maine; Abijah Mann, of New York, and John Chaney, of Ohio.

²House Report No. 194, pp. 6 and 7, second session Twenty-fourth Congress. The members of the committee joining in this report were Messrs. Dutée J. Pearce, of Rhode Island; Henry A. Muhlenberg, of Pennsylvania; Edward A. Hannegan, of Indiana; Gorham Parks, of Maine; Abijah Mann, of New York, and John Chaney, of Ohio.

the call; and that, if any paper, shown to be of a public character, and such as ought to be placed on file or record, is excluded there is just ground of accusation against the officer for violation of duty. But the bare suspicion that papers which ought to be on file are not there can not warrant a call for all the personal and private papers of such officer in order that the committee may decide by inspection whether there are any which ought to go into the public files.

Besides, in calls made by Congress on the President or heads of Departments, the reservation is impliedly established, by usage, of such papers as, in their opinion, can not be communicated without injury to the public service. Consequently, all calls for papers must be subject to this discretion of the public officer of whom they are required; and if he abuses that discretion he must be held responsible for it in some other form of investigation into his official conduct.

1739. A committee of the House declined to prefer any charge against a public officer before requiring him to furnish certain records of his office.—In 1839,¹ in the course of the investigation into the affairs of the New York custom-house by a select committee, a call was made upon the collector to furnish the committee with certain correspondence. In response the collector questioned the authority of the committee to make the demand on him, under the language of the resolution creating the committee:

That the said committee be required to inquire into and make report of any defalcations among the collectors, receivers, and disbursers of the public money, which may now exist; the length of time they have existed, and the causes which led to them.

This being the language, the collector requested, before he sent the correspondence asked, that he be informed whether the committee or any of its members charged him with being a defaulter.

The committee responded by repeating the call for the correspondence and by agreeing to the following resolution:

Resolved, That this committee can not recognize any authority or right whatever in any collector, receiver, or disburser of the public money to call upon "the committee," or "any of its members," to prefer or to disavow a charge of his "being a defaulter," before such officer sends "the correspondence" of his "office," when required under the authority of the House of Representatives "to send for persons and papers," to enable its committee "to inquire into, and make reports of, any defalcations among collectors, receivers, and disbursers of the public money which may now exist;" nor can this committee or "any of its members" report whether Mr. Hoyt is or is not now a defaulter until by examination of the "persons and papers" for which it has sent and will send it shall discover "who are the defaulters, the amount of defalcations, the length of time they have existed, and the causes which led to them." And when the committee shall have found the facts embraced by these inquiries or closed its investigation it will make a report thereof to the House of Representatives.

Collector Hoyt responded by asking a full investigation of his accounts and transmitting the letters called for.

1740. In 1837 a committee took the view that the House might inquire into alleged corrupt violations of duty by the Executive only with impeachment in view.—On March 3, 1837,² the select committee appointed on January 17 to inquire into the condition of the Executive Departments of the Government,³ made a report which takes the following view of the investigation:

¹ Third session Twenty-fifth Congress, House Report No. 313, pp. 326, 349.

² Second session Twenty-fourth Congress, House Report No. 194.

³ The committee consisted of Messrs. Henry A. Wise, of Virginia; Dutee J. Pearce, of Rhode Island; Henry A. Muhlenberg, of Pennsylvania; Robert B. Campbell, of South Carolina; Edward A. Hannegan, of Indiana; Gorham Parks, of Maine; Levi Lincoln, of Massachusetts; Abijah Mann, of New York, and John Chaney, of Ohio. Messrs. Wise, Lincoln, and Campbell did not concur in this report.

The power of the House to institute an inquiry of this kind into the conduct of the Executive, directly personal in its application, can nowhere exist, unless it be an incident of the "sole power of impeachment" which is given to the House of Representatives by the Constitution. This power extends to the President and all civil officers of the United States on charges of treason, bribery, or other high crimes and misdemeanors. Such, in effect, were the representations upon which the resolution creating this committee was founded and the necessity of its adoption urged before the House. Such is the nature of the allegations formally put upon the journal of the committee by the mover of the resolution in the House, the chairman. * * *

It follows, therefore, that the only constitutional power under which the House of Representatives, as a coordinate branch of the Government, could constitute a committee to inquire into alleged "corrupt violations of duty" by another coordinate branch of the Government (the Executive) is the "power of impeachment."

By the terms of the resolution referred to the committee, and by the express declaration of the mover of that resolution, as well as by the legal construction of the constitutional powers of the House, this inquiry can not be brought within the only other clause of the Constitution which, by any possible implication, can be made applicable to it, viz: "that the Congress shall have power to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof."

The allegation is nowhere made that the laws are defective in relation to the "powers vested in any Department or officer" of the Government, and that this inquiry is made to enable Congress to "make laws;" but the charges are against the individual officers for "corrupt violation" of existing laws; and the ground is expressly taken by the chairman, in his declaration under oath, "that the whole Government needs reform, and more patriotic and honest men to administer it."

The committee, therefore, conceive that they were fully warranted and imperatively required to regard this investigation in the light of a preliminary inquiry into facts and evidence to show whether a process of impeachment ought not to be instituted by the House of Representatives against the Executive and the heads of Departments.

1741. The House, in 1824, investigated, on application of the United States minister to Mexico, a controversy on a public matter between him and the Secretary of the Treasury.

The committee investigating charges against Secretary of the Treasury W. H. Crawford permitted him to be represented by counsel and to produce testimony.

Instance wherein a committee, empowered to sit during recess, was directed to file its report with the Clerk of the House.

On April 19, 1824,¹ the Speaker communicated to the House an address of Ninian Edwards, late a Senator of the United States from the State of Illinois, complaining that injustice had been done him in a report from the Secretary of the Treasury, William H. Crawford, accompanying the correspondence between the Treasury Department and the banks in the different States upon the subject of the deposits of public money in said banks, exculpating himself, and also preferring certain charges against the said Secretary.

The address contained two general charges against the Secretary: One of mis-managing the public funds, under which various illegal transactions were alleged in reference to the deposit of the public money in certain banks and the mode in which such moneys were allowed, afterwards, to be repaid; the other, imputing to the Secretary the suppression of papers and documents or failing to communicate them when they ought to have been communicated in answer to resolutions of the Houses of Congress.

¹ First session Eighteenth Congress, Journal, p. 433; Annals, p. 2431.

In this address Mr. Edwards claims the right to be heard, not only because such a right would be accorded to the humblest individual, but because it was due also to the nation, in view of his late position as Senator and his present position as minister to Mexico; and also because of the exceptional circumstances of the case. He was called upon by the House of Representatives at the last session and was subjected to an examination which has not its parallel in the records of any free country.

An attempt having been made to impeach his credibility, he should be allowed to repel the attack.

Debate arose as to the disposition of the address. It was proposed to print it, but Mr. Daniel Webster, of Massachusetts, objected that it was incompatible with the dignity of the House to convert it into an arena where prominent men might carry on their personal contests. If an investigation was to be made the letter might be printed for information of the House, otherwise he should object.

The House finally adopted an order that the address be referred to a select committee with power to send for persons and papers. Messrs. John Floyd, of Virginia, Edward Livingston, of New York, Daniel Webster, of Massachusetts, John Randolph, of Virginia, John W. Taylor, of New York, Duncan McArthur, of Ohio, and George W. Owen, of Alabama, were appointed on this committee.

On April 22¹ Mr. Floyd, by the instructions of the committee, reported the following minutes of the proceedings of the committee:

Voted, That the committee ought to proceed to make inquiry into the matters contained in the said communication and connected therewith.

Voted, That for the purpose of such inquiry the attendance of said Ninian Edwards upon the committee, to be by them examined, is requisite, and that his attendance be accordingly ordered.

Voted, That the chairman do inform the House of the foregoing resolutions of the committee; and, inasmuch as it is suggested that the said Ninian Edwards is about to leave the United States on foreign diplomatic service,

Voted, That the chairman do move the House that information of the said communication, of the votes of the House thereon, and of the foregoing resolutions of the committee be communicated to the President.

After debate this motion was agreed to.

On April 23² President Monroe, by message, acknowledged the receipt of the resolution of the House, and informed the House that he had already instructed Mr. Edwards not to proceed to his mission, but to await the call of the committee of the House.

On May 25³ Mr. Livingston made a report from the committee. The report states that immediately upon their appointment the committee communicated a copy of Mr. Edwards's address to the Secretary of the Treasury and also ordered the attendance of Mr. Edwards. The report then goes at length into the charges against the Secretary of the Treasury and appends, with other documents, the answer, in writing, to the charges of Mr. Edwards. The Secretary did not appear personally before the committee, but in his response he states that he is willing to do so. The committee state that the investigation should not be terminated until

¹ Journal, p. 445; Annals, p. 2471.

² Journal, p. 448; Annals, p. 2480.

³ Journal, pp. 579, 580, 589, 590; Annals, pp. 2713, 2761, 2766; House Report No. 128.

Mr. Edwards shall have been examined, and recommend that they be allowed to sit in the recess after the adjournment of the session in order to complete the work.

Mr. Livingston then moved the adoption of the following:

Ordered, That the committee to which was referred the address of Ninian Edwards be required to sit after the adjournment of the House for such time as shall be necessary in their judgment for further examination; that any additional report which may be made by them be filed in the office of the Clerk of the House; and that any three members of the committee be a quorum for the transaction of business.

After debate, on May 26, the House struck out that portion of the order making three members of the committee a quorum and added a clause providing that the report, after being filed with the Clerk, should be by him printed and forwarded to Members of Congress.

A further order, adopted May 27,¹ empowering the Clerk to pay witnesses and the expenses of subpoenaing them, on certificate of the chairman, closed the proceedings of the House.

In making their final report,² the committee state that Mr. Edwards attended the committee in obedience to summons, was examined as a witness (under oath), was cross-examined by a gentleman attending on behalf of the Secretary of the Treasury, and this testimony, together with various documents and reports were communicated as part of the report. A paper in reply to the communication heretofore received by the committee from the Secretary, and another in the nature of an argument on the whole case, had also been presented by Mr. Edwards and considered by the committee. The committee express the opinion that nothing had been proved to impeach the integrity of the Secretary, but beyond that statement content themselves with presenting the facts and testimony.

An examination of the report shows that among those summoned and examined as witnesses were United States Senators Thomas H. Benton, of Missouri, and James Noble, of Indiana.³ Also several Members of the House were examined.

It appears from the report that during the examination before the committee the Secretary of the Treasury was permitted to be represented by counsel and to summon witnesses in his own behalf.

1742. A letter from an individual, charging an officer of the Army with corruption, was considered and an investigation was ordered.—On April 13, 1816,⁴ the Speaker laid before the House a letter from William Simmons, late accountant of the War Department, charging Col. James Thomas, deputy quartermaster-general in the armies of the United States, with fraud and misapplication of public moneys, which was read and laid on the table.⁵

The following resolution was then presented by a Member:

Resolved, That a committee of five members be appointed to inquire into the state of the accounts rendered and settled of James Thomas, late a deputy quartermaster-general of the United States, and also to examine all accounts connected therewith; that the said committee have power to send for persons and effects.

¹ Journal, p. 601.

² Annals, p. 2770.

³ As this examination occurred in the recess of Congress it was impossible to obtain permission of the Senate for their attendance as witnesses.

⁴ First session Fourteenth Congress, Journal, pp. 465, 701; Annals, p. 1199.

⁵ Under the present usages of the House, such letters, which are in the nature of memorials, are not presented in open House, but are referred through the Clerk. (See sec. 3364 of Vol. IV of this work.)

There was objection to this resolution on the ground that information on the subject had already been called for from the proper Department; that it was improper to countenance individuals in bringing private quarrels to Congress; that the letter was not couched in proper terms; and that the power to send for persons and papers should not be lightly given.

On the other hand, it was agreed that every person who came before the House on a matter of public concern was entitled to a hearing, and that the circumstances of the case suggested the propriety of an investigation.

The resolution was agreed to, and the committee, on April 24, reported the results of the inquiry.

1743. While a committee of the House reported it inexpedient for the House to investigate the charges of a subordinate against a captain in the Navy, they expressly asserted the power of the House so to do.—On February 22, 1839,¹ Mr. Charles Naylor, of Pennsylvania, from the select committee appointed on the 14th instant, “to inquire into the official conduct of Capt. Jesse D. Elliott, of the United States Navy, while in command of the squadron in the Mediterranean, in the years 1837 and 1838, and particularly into the allegations of tyranny and oppression toward the officers under his command,” and to which was also referred, on the same day, the letter from the Secretary of the Navy transmitting copies of the charges preferred by Charles C. Barton, a passed midshipman, against the said Captain Elliott, made a report² under the direction of a majority of said committee, recommending the adoption of the following resolutions, viz:

Resolved, That an interference by the House of Representatives in the disputes that occur between subordinate officers of the Navy and their superiors, commanding squadrons, is a power which ought at all times to be exercised with great caution, and is calculated to produce insubordination in that important arm of the national defense; but, in the opinion of this committee, it is competent for the representatives of the people to investigate any abuses alleged to be committed by officers in command of squadrons, and to provide, by law, against a recurrence of such abuses; and, moreover, to investigate and ascertain whether the head of the Navy Department may have used such means as are placed in his hands by law to punish and prevent any such alleged abuses.

Resolved, That the most appropriate remedy for such subordinate officers is an appeal to the Secretary of the Navy for a court of inquiry to investigate the charges exhibited against their superiors; and from this decision the party aggrieved may appeal to the President, who, by the Constitution, is Commander in Chief of the Navy, he as well as the Secretary being liable to impeachment for a willful or corrupt violation or neglect of duty.

Then follow other resolutions reciting that for lack of time it is inexpedient for the House to undertake the investigation.

Mr. Seargent S. Prentiss, of Mississippi, moved to recommit the report, with instructions to strike out from the resolutions such parts as related to the propriety of the investigation.

Pending consideration of this motion the whole subject was laid on the table.

¹Third session Twenty-fifth Congress, Journal, pp. 543, 633; Globe, p. 201. The Members of this committee were: Messrs. Naylor; Ogden; Hoffman, of New York; Samuel Ingham, of Connecticut; Francis Mallory, of Virginia; Thomas L. Hamer, of Ohio, and Francis S. Lyon, of Alabama.

²House Report No. 295. No one, either of majority or minority, questioned the right of the House to investigate.

1744. The House determined to investigate an allegation that the decision of the Senate in an impeachment case had been determined by improper influences.

The question of order being raised that a pending resolution reflected on the Senate, the Speaker held that it was a matter for the House and not the Chair to pass on.

On May 16, 1868,¹ Mr. John A. Bingham, of Ohio, from the Managers of the impeachment of the President, offered the following resolution:

Whereas information has come to the Managers which seems to them to furnish probable cause to believe that corrupt means have been used to influence the determination of the Senate upon the articles of impeachment exhibited to the Senate by the House of Representatives against the President of the United States; Therefore,

Be it resolved, That for the further and more efficient prosecution of the impeachment of the President, the Managers be directed and instructed to summon and examine witnesses under oath, to send for persons and papers, to employ a stenographer, and to appoint a subcommittee to take testimony, the expenses thereof to be paid from the contingent fund of the House.

Mr. John W. Chanler, of New York, made the point of order that as this resolution reflected on the Senate it was not proper for the House to consider it.

The Speaker² held that the Chair could not decide that question, it being a question for the consideration of the House.

The House agreed to the preamble and resolution, yeas 88, nays 14.

1745. An instance wherein the House investigated political troubles within a State.—In 1845³ the House investigated the troubles within the State of Rhode Island, caused by the efforts to substitute a constitution for the old colonial charter.

1746. Various instances of investigations by the House.—On February 28, 1876,⁴ the House, on recommendation of the Committee on Foreign Affairs, directed that committee to investigate into the connection of the United States minister at the court of St. James with the Emma mine, so called.

1747. In 1879⁵ a committee of the House investigated the conduct of Supervisor of Elections John I. Davenport, of New York, appointed by a judge of the United States circuit court and not removable by impeachment.

1748. On May 12, 1892,⁶ the House authorized the investigation of the employment of Pinkerton detectives by companies engaged in interstate commerce and the transportation of the mails.

1749. The Speaker has considered it his duty to lay before the House a communication from a suspended consul-general who asked an investigation.—On January 23, 1878,⁷ Mr. Speaker Randall laid before the House a letter from John C. Myers, “consul-general (under suspension) at Shanghai, China,”

¹ Second session Fortieth Congress; Globe, p. 2503; Journal, p. 698.

² Schuyler Colfax, of Indiana, Speaker.

³ First session Twenty-eighth Congress, House Reports Nos. 546, 581.

⁴ First session Forty-fourth Congress, Record, p. 1345; Journal, p. 470.

⁵ Third session Forty-fifth Congress, House Report No. 135.

⁶ First session Fifty-second Congress, Record, p. 4222.

⁷ Second session Forty-fifth Congress, Record, p. 504.

addressed to the Speaker, requesting that an inclosed statement of the condition of his office be presented to the House and that an investigation be made.

Mr. Omar D. Conger, of Michigan, raised the question that the communication should be sent to the Department.

The Speaker said:

This was sent to the Speaker, and it is the duty of the Speaker to transfer it to the House. The House can then do with it what it pleases.

The communication was referred to the Committee on Foreign Affairs.